

TRANSMITTAL OF APPEAL BRIEF (Small Entity)

Docket No.
MBU-1036

Application Of: **Huberman, et al.**

Serial No.
09/417,399

Filing Date
October 13, 1999

Examiner
Rimell

Group Art Unit
3712

Invention: **TEETHER BOOK**

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Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on:
February 23, 2001

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A verified statement of small entity status under 37 CFR 1.27:

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Dated: June 25, 2001

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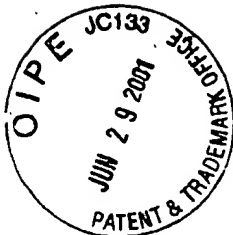
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DOCKET NO.: MBI-1036

PATENT

#12
ref.
7/26/01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Huberman et al.**

Serial No.: **09/417,399**

Group Art Unit: **3712**

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Examiner: **Rimell**

For: **TEETHER BOOK**

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APPEAL BRIEF

This is an appeal from the Final Rejection dated September 26, 2000. Appellant respectfully submits that the Final Rejection was made in error, and should be overturned upon *de novo* review, for the reasons set forth below.

I. THE REAL PARTY IN INTEREST

The Real Party in Interest is Munchkin, Inc. a corporation based in Van Nuys, California that designs and manufactures high quality infant care products.

II. RELATED APPEALS AND INTERFERENCES

No related appeals or interferences exist.

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III. THE STATUS OF THE CLAIMS

Claims 1-14, 16-18 and 20-36 are pending in this Application. Claims 1-14, 16-18 and 20-35 stand rejected. Claim 36 has been indicated as drawn to allowable subject matter but is objected to because it depends from a rejected claim.

All rejections are being appealed.

IV. THE STATUS OF ANY AMENDMENTS FILED AFTER FINAL REJECTION.

No Amendment after Final Rejection has been filed

V. SUMMARY OF THE INVENTION

With both parents working during the daytime in a growing number of families, in many households the only or most active period of reading is at bedtime. After reading to a child just before to bedtime, the parent will typically place the baby or toddler into its crib or bed. The child is often inclined to grab the book that the parent was reading and want to bring it into the bed or the crib. Standard books that are made out of paper and cardboard are not safe to give to a baby or toddler. As a child is teething, she may be expected to place any handy object in her mouth, including a book. Paper books may become torn, and may therefore pose a choking hazard.

The invention involves a teething toy that is designed to develop in a child a familiarity with books while at the same time safely providing the child with teething relief. In the preferred embodiment, the invention includes a book-like structure that has a plurality of leaves, and at least one teething element. In one aspect of the invention that Applicant is claiming in independent claim 1, the teething element is attached to at least one of the leaves and is fabricated from a non-toxic material. The teething element is also sized and dimensioned to be comfortably inserted into an infant's mouth for teething, and further has no sharp edges capable of injuring an infant, so that it will be safe for an infant or small child to place his or her mouth on said teething element.

In another aspect of the invention that Applicant is claiming in independent claim 14,

binding structure is provided in order to bind the leaves together as a book. In addition, gripping structure (which is configured to include the teething element) is provided near an outer edge of at least one of the leaves for providing enhanced grippability to the leaf. By combining the functions of gripping structure and the teething element the invention permits a small child to be able to both teethe and easily turn the leaves of book-like structure like a book.

In another aspect of the invention that Applicant is claiming in independent claim 18, the teething element is embodied within leaf weight structure that provides enhanced weight to the outer edge area of at least one of the leaves of the book like structure. As a result, the book-like article may function as a teether and be discouraged from closing when it is laid open in a given position.

In yet another aspect of the invention that Applicant is claiming in independent claim 26, the leaves are fabricated from a material that includes cloth.

VI. ISSUES ON APPEAL

Appellant believes that the various issues to be considered on appeal may be concisely summarized as follows:

ISSUE 1:

Have claims 1-14, 16-18 and 20-36 been improperly rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention?

ISSUE 2:

Have claims 1-8, 12-21 and 22-32 been improperly rejected under 35 U.S.C. §102(b) based on U.S. patent 5,217,256 to Lomas ("Lomas")?

ISSUE 3:

Have claims 1, 11, 26 and 35 been improperly rejected under 35 U.S.C. §102(b) based on U.S. patent 5,626,366 to Lee ("Lee")?

ISSUE 4:

Have claims 9, 10, 33 and 34 been improperly rejected under 35 U.S.C. §103(a) based on Lomas?

V. GROUPING OF CLAIMS

Appellant respectfully requests that the rejection of each claim be considered separately.

No claims shall stand or fall together.

VI. ARGUMENT -- THE REJECTION AND APPELLANT'S RESPONSE.

ISSUE 1: HAVE CLAIMS 1-14, 16-18 AND 20-36 BEEN IMPROPERLY REJECTED UNDER 35 U.S.C. §112, SECOND PARAGRAPH, AS BEING INDEFINITE FOR FAILING TO PARTICULARLY POINT OUT AND DISTINCTLY CLAIM THE SUBJECT MATTER WHICH APPLICANT REGARDS AS THE INVENTION?

A. The Text of the §112 Rejections

The Office Action of September 26, 2000 applied the following §112, second paragraph rejection to claims 1-14, 16-18 and 20-36:

Claims 1-14, 16-18 and 20-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

In claim 1, the phrase "sized and dimensioned to be comfortably inserted into an infant's mouth" is indefinite, since the size of an infant's mouth can vary considerably.

In claim 3, the phrase "integrated into said artwork" is vague and indefinite.

In claim 13, the phrase "sufficiently weighted" is indefinite.

In claim 14, the phrase "gripping means comprising teething means" is indefinite and contradictory.

In claim 18, the phrase "leaf weight means comprising teething means" is indefinite and contradictory.

In claim 26, the phrase "being sized and dimensioned to be comfortably inserted into an infant's mouth" is vague and indefinite, as the size of an infant's mouth can vary considerably.

In responding to these rejections, Applicant would first like to point out the excellent recitation of the appropriate standard for clarity and definiteness that is required under §112, second paragraph that is provided in MPEP 2173.02:

2173.02 Clarity and Precision

The examiner's focus during examination of claims for compliance with the requirement for definiteness of 35 U.S.C. 112, second paragraph is whether the claim meets the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available. When the examiner is satisfied that patentable subject matter is disclosed, and it is apparent to the examiner that the claims are directed to such patentable subject matter, he or she should allow claims which define the patentable subject matter with a reasonable degree of particularity and distinctness. Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire. Examiners are encouraged to suggest claim language to applicants to improve the clarity or precision of the language used, but should not reject claims or insist on their own preferences if other modes of expression selected by applicants satisfy the statutory requirement. (Emphasis Added)

The essential inquiry pertaining to this requirement is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of:

- (A) The content of the particular application disclosure;
- (B) The teachings of the prior art; and
- (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made. If the scope of the invention sought to be patented cannot be determined from the language of the claims with a reasonable degree of certainty, a rejection of the claims under 35 U.S.C. 112, second paragraph is appropriate. *In re Wiggins*, 488 F.2d 538, 179 USPQ 421 (CCPA 1973).

B. Claims 1 and 26

The rejection of claims 1 and 26 was based on the premise that the phrase “sized and dimensioned to be comfortably inserted into an infant's mouth” is indefinite, because “the size of an infant's mouth can vary considerably.” Applicant will concede that that certain infants have larger mouths than others. However, it is well-known within the field of baby products what size articles such as teethers, pacifiers and feeding nipples must be in order to comfortably fit within the mouth of an infant. In fact, guidelines for the sizing of such articles have been issued from organizations such as the Consumer Product Safety Commission and the American Society for

Testing and Materials¹. As the *Wiggins* decision cited above requires, consideration of the definiteness of claim language must take into account the interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made. In many ways, the phrase that is at issue in claim 1 is similar to the claim limitation that was at issue in *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1 USPQ2d 1081 (Fed. Cir. 1986). In that case, a claim limitation specifying that a certain part of a pediatric wheelchair be "so dimensioned as to be insertable through the space between the doorframe of an automobile and one of the seats" was held to be definite. The court stated that the phrase "so dimensioned" is as accurate as the subject matter permits, noting that the patent law does not require that all possible lengths corresponding to the spaces in hundreds of different automobiles be listed in the patent, let alone that they be listed in the claims.

Applicant respectfully submits that the phrase "sized and dimensioned to be comfortably inserted into an infant's mouth" that is included in claim 1 is no less definite than the "so dimensioned as to be insertable through the space between the doorframe of an automobile and one of the seats" claim limitation that was held to be definite in the *Orthokinetics* case.

For all of the reasons given above, Applicant respectfully submits that the §112, second paragraph rejections that were applied to claims 1 and 26 and the claims depending directly or indirectly therefrom are clearly erroneous, and for that reason should be overturned.

C. Claim 3

Claim 3 reads as follows:

3. A teething toy according to claim 2, wherein said teething element is integrated into said artwork so that said teething element appears to be part of said artwork.

¹ This is discussed on page 5 of Applicant's specification.

A quick glance at Figures 6 and 7 of the patent application might be useful to the Examiners-in-Chief at this point in understanding this aspect of the invention. In Figure 6 the teething element 54 is made to appear as if it is part of a pile of hay that a horse in the artwork 52 is preparing to eat. In this embodiment, the teething element 54 may further be colored bright yellow, so as to blend in with the pile of hay 56 that is shown in the artwork 52. In the embodiment that is depicted in Figure 7, the teething element 64 is made to appear to be part of the tree 66, and is preferably colored so as to be bright green. The texture of the teething elements 64 may also be made consistent with the expected leaf like structure of the tree.

The premise of the rejection of claim 3 was that the phrase "integrated into said artwork" is vague and indefinite. Applicant respectfully submits that this rejection is totally without merit. Stating that the teething element is integrated into the artwork seems to the undersigned to be a very clear and unambiguous definition at one conceptual level of what is shown in Figures 6 and 7 of the specification. In fact, the undersigned cannot think of a more clear way to express this concept. Regardless of whether a clearer way exists to circumscribe this concept, MPEP 2173.02 and the *Wiggins* decision cited above make it clear that the appropriate standard for deciding whether §112, second paragraph has been complied with is whether the claim meets the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available. Applicant is required only to present claims that define the patentable subject matter with a reasonable degree of particularity and distinctness. Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire. Examiners should not reject claims or insist on their own preferences if other modes of expression selected by applicants satisfy the statutory requirement.

The clarity and definiteness of claim 3 appears to be so sound to the Applicant that Applicant suspects that the true nature of the objection in the mind of the Examiner may be the conceptual scope or breadth of the claim, not its definiteness. If this is the case, Applicant would like to point out the recitation of the law that is contained in MPEP Section 2173.04, which is

titled "Breadth is not Indefiniteness":

Breadth of a claim is not to be equated with indefiniteness. *In re Miller*, 441 F.2d 689, 169 USPQ 597 (CCPA 1971). If the scope of the subject matter embraced by the claims is clear, and if applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, then the claims comply with 35 U.S.C. 112, second paragraph.

For the reasons provided above, Applicant respectfully submits that claim 3 does in fact comply with the statutory requirements of clarity and definiteness that are set forth in §112, second paragraph, and respectfully requests that the rejection of this claim and the claims depending directly or indirectly therefrom should be overturned.

D. Claim 13

Claim 13 in its entirety reads as follows:

13. A teething toy according to claim 12, wherein said teething element is weighted to keep the book-like structure from closing when it is laid open.

The basis for the §112, second paragraph rejection of claim 13 is that the phrase "sufficiently weighted" is indefinite. However, the rejection fails to take into account that the word "sufficiently" is no longer in claim 13, having been removed in the amendment that was filed on June 26, 2000 response to the original §112 rejection. The basis for the rejection having been removed, reversal of the §112 rejection of claim 13 and the claims depending directly or indirectly therefrom should be overturned.

E. Claims 14 and 18

Claim 14 and 18 in their entirety read as follows:

14. A book-like article for small children, comprising:
a plurality of leaves;
binding means for binding said leaves together as a book; and
gripping means, secured near an outer edge of at least one of said leaves, for providing enhanced grippability to the leaf, said gripping means comprising teething means for permitting an infant to safely teethe thereon,

said teething means being fabricated from a nontoxic material and being sized and dimensioned to be comfortably inserted into an infant's mouth for teething purposes and further having no sharp edges capable of injuring an infant, whereby a small child will be able to teethe and to easily turn the leaves of the book-like article like a book.

18. A book-like article for small children, comprising:
a plurality of leaves;
binding means for binding said leaves together as a book; and
leaf weight means, secured near an outer edge of at least one of said leaves, for providing enhanced weight to the outer edge area of the leaf, said leaf weight means comprising teething means for permitting an infant to safely teethe thereon, said teething means being fabricated from a nontoxic material and being sized and dimensioned to be comfortably inserted into an infant's mouth for teething purposes and further having no sharp edges capable of injuring an infant, whereby the book-like article will function as a teether and be discouraged from closing when it is laid open in a given position.

The basis for the §112, second paragraph rejection of claim 14 is that the phrase “gripping means comprising teething means” is “indefinite and contradictory.” A similar rejection was applied to claim 18, with the Final Rejection taking the position that the phrase “leaf weight means comprising teething means” is “indefinite and contradictory.”

Again, the second paragraph of §112 does not permit an Examiner to reject a claim or insist on his own preferences if other modes of expression selected by the Applicant satisfy the statutory requirement. Applicant is required only to present claims that define the patentable subject matter with a reasonable degree of particularity and distinctness. Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire. It is clear from the specification that the teething elements that are attached to the leaves of the book like structure and the preferred embodiment serve at least three functions: As a teething element, as a leaf weight that will tend to keep the book like structure open to a particular page and as a need to gripping the leaves as the pages of the book like structure are turned. In claim 14, Applicant has chosen to claim the existence of a gripping means on the book like article, and has further qualified the gripping means as comprising or including a teething means. Similarly, in claim 18, Applicant has chosen

to claim the existence of leaf weight means, and has further qualified the leaf weight means as comprising or including a teething means. Applicant sees nothing indefinite at all in the objected to claim language. It is clear that this language in the claims circumscribes exactly what describes -- in claim 14 a gripping means that includes a teething means and in claim 18 and leaf weight means that includes a teething means. Clearly, there is nothing indefinite about the term gripping means as it is set forth in claim 14, or the term teething means, or the fact that the teething means is included as part of the gripping means. Similarly, there is nothing indefinite about the term leaf weight means in claim 18, nor the fact that the teething means is included within the weight means.

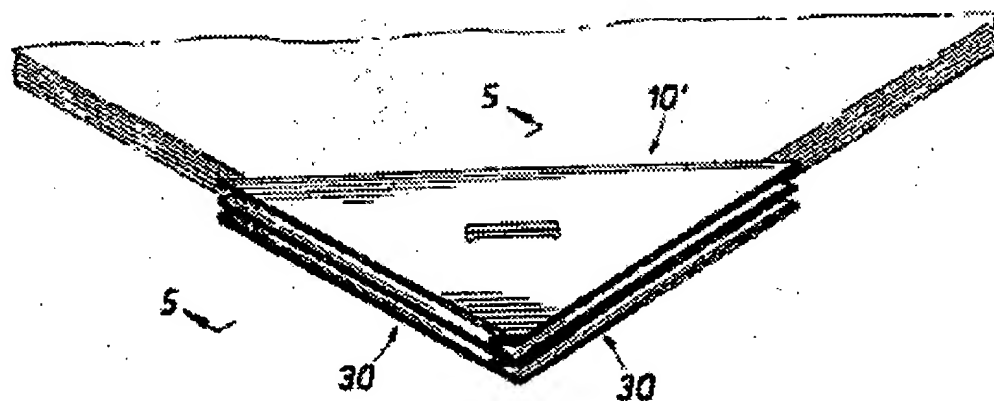
Nor does Applicant see anything "contradictory," as the Final Rejection terms it, and the objected to claim language. There is no legal prohibition against qualifying one means plus function limitation within a claim as including another element that is also expressed in means plus function language. There is also nothing contradictory about the same structure performing more than one function, such as a gripping means and teething means or a leaf weight means and teething means.

For all of these reasons, Applicant respectfully submits that the §112 second paragraph rejection of claims 14 and 18 and the claims depending directly or indirectly therefrom is clearly erroneous, and for that reason should be overturned.

**ISSUE 2: HAVE CLAIMS 1-8, 12-21 AND 22-32 BEEN IMPROPERLY REJECTED
UNDER 35 U.S.C. §102(B) BASED ON U.S. PATENT 5,217,256 TO LOMAS
("LOMAS")?**

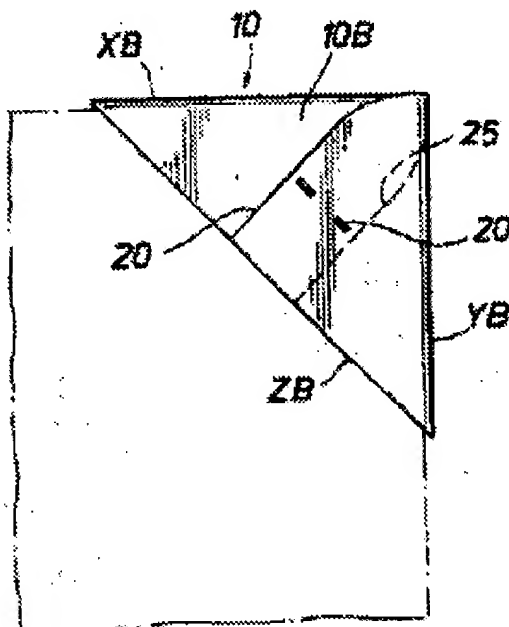
A. The Lomas Reference

U.S. patent 5,217,256 to Lomas (hereinafter "Lomas") discloses a paper stack protection device that has a triangular shaped pocket that is designed to accept a corner of a stack of papers. As may be seen in the figure provided below, a (presumably metal) staple through the pocket and the corner of a paper stack secures the pocket to the stack of papers. As a result, the first and last pages in the stack of papers are protected against being torn away from the staple and the other papers in the stack.



The embodiment of the Lomas invention shown above is that of Figure 4, wherein the sides of the protection device are convoluted in accordion fashion for greater expandability. The other embodiment, which is shown in Figure 1 of the reference, is similar, but without the convolutions.

Lomas discloses or suggests nothing that is relevant to the field of books for young children or teething devices. It is clear from reading the specification of this reference that it is intended for use within a professional office environment, not in a child's bedroom or nursery. Figure 2 of the reference, shown below, depicts the folded ends of the metal staple 20 protruding from the bottom of the protection device 10, clearly presenting a hazard that no responsible parent or caregiver would allow to be presented to a small child.



Lomas in column 2, lines 55-60 notes that the protection device 10 may be made of papers of different colors so that a user of the device may identify the stack of papers at a glance. As Applicant has explained in the specification, articles that are made out of paper and cardboard are not safe to give to a baby or toddler. This is especially the case with articles that contain colored paper or cardboard, which is almost always treated with a chemical dye. For this reason as well, the article disclosed in Lomas is unsuitable for any intended use for infants or small children.

B. The §102 Rejection

Claims 1-8, 12-21 and 22-32 were rejected under §102(b) in the Final Rejection with the following explanation:

Lomas discloses a paper stack having a plurality of leaves, and an element (10) attached to all of the leaves in the stack. The element is physically capable of being teathed. The element is elastomeric and a result of expandable folds incorporated into element. The expandable folds also read as texturing on the surface of the element. Any printed matter which is printed on the leaves may be read as "artwork". The leaves are flexible and thin, and thus read as a thin "cloth like" material. This claim language does not explicitly require the existence of cloth.

C. The Rejection of Independent Claim 1 Under §102(b) Based on Lomas

Independent claim 1 reads as follows:

1. A teething toy, comprising:
a book-like structure having a plurality of leaves; and
a teething element that is attached to at least one of said leaves, said teething element being fabricated from a non-toxic material and being sized and dimensioned to be comfortably inserted into an infant's mouth for teething purposes, said teething element further having no sharp edges capable of injuring an infant, whereby it will be safe for an infant or small child to place his or her mouth on said teething element.

A prior art reference anticipates a claim under §102(b) only if the reference discloses, either expressly or inherently, every limitation of the claim. See *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "[A]bsence from the reference of any claimed element negates anticipation." *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571, 230 USPQ 81, 84 (Fed. Cir. 1986).

The following is a list of limitations in claim 1 that are not disclosed, either expressly or inherently, in Lomas:

1. It is clear from even a quick review of the reference that Lomas fails to disclose either expressly or inherently a "teething toy" as is set forth in the preamble of independent claim 1.

2. Lomas does not disclose a book like structure having a plurality of leaves. Books are bound so that their pages can be turned and read. The device disclosed in Lomas, to the contrary, is designed to keep a number of pages secured together with a staple.
3. Lomas does not disclose or suggest in any way a teething element. Instead it discloses a paper stack protection device for securing a number of pages together with a staple so that the pages do not become disattached from the staple and from each other. This device is made from a material (paper) that renders it unsuitable and dangerous to be used as a teething element. Moreover, it has two staple ends protruding from one of its sides, making it even more unsuitable for use as a teething element. Finally, the paper material is disclosed as preferably being color-coded, meaning that it has been dyed, making it even more dangerous for small children and further teaching away from any possible use of this device as a teething element.
4. *Ipso facto*, Lomas does not teach a teething element that is fabricated from a non-toxic material. In fact, the device that is disclosed in this reference is fabricated from a colored paper material that would be expected to have an unacceptable level of toxicity for use with small children.
5. There is no teaching in Lomas of a teething element that is sized and dimensioned to be comfortably inserted into an infant's mouth for teething purposes.
6. There is no teaching in Lomas of a teething element that is constructed so as to have no sharp edges capable of injuring an infant. To the contrary, two sharp metal staple ends extend from the device in Lomas that the rejection has interpreted as being a teething element.

Accordingly, Lomas fails to disclose or suggest either expressly or inherently not one, but several limitations that are contained in independent claim 1. With all due respect to the

Examiner, the interpretation of the paper stack protection device in Lomas as a “toy” containing a “teething element” appears to be more of a desperate exercise of imagination that was guided by hindsight and a perceived need to reject Applicant's claims than it was a well-considered determination taking into account the proper interpretation of the claim language and the actual disclosure, both explicit and inherent, that is contained in Lomas. Applicant recognizes that during the patent examination process claims are given their broadest reasonable meaning. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). However, as was explained by the Federal Circuit in *Rowe v. Dror*, 112 F.3d 473, 478, 42 USPQ2d 1550, 1553 (Fed. Cir. 1997), this does not relieve the PTO of its essential task of examining the entire patent disclosure to discern the meaning of claim words and phrases. See *In re Bulloch*, 604 F.2d 1362, 1365, 203 USPQ 171, 174 (CCPA 1979) (looking to specification and record to discern what the applicant claimed). It is absolutely clear from Applicant's specification that the term “toy” is limited to an article that is intended for use by a child. It is also clear from Applicant's specification that the term “book like structure” means something that is like a book, meaning that the pages can be turned. It is further clear that “teething element” is properly defined to be limited to structure that is designed specifically for the purpose of teething by an infant or small child and that is safe for this purpose. The meaning of the phrase “sized and dimensioned to be comfortably inserted into an infant's mouth for teething purposes” is clearly defined on page 5 of Applicant's originally filed specification:

Teething element 26 is further sized and configured so as not to present a choking hazard to an infant or small child. In the preferred embodiment, the teething element 26 is so sized and configured so as not to be capable of entering and penetrating to its full depth an opening in a test fixture that is 30 mm in depth, 35 mm in height, and 50 mm in width, with the ends of the width being curved at a radius of 17.5 mm. To further ensure that teething elements 26 is sized and configured so as not to present a choking hazard to an infant or small child, it is also sized and configured so as not to enter and penetrate to its full depth a cylindrical cavity in a test fixture that has a depth of 30 mm, and a circular opening having a diameter of 42.7 mm. The aforementioned criteria are consistent

with the guidelines of the Consumer Product Safety Commission and the American Society of Testing and Materials.

Considering the proper meaning of the words and phrases of claim 1, discerned from inspecting the originally filed specification, Applicant respectfully submits that it becomes quite clear that claim 1 is not anticipated under §102(b) based on Lomas. Accordingly, reversal of the rejection is respectfully requested.

D. The Rejection of Dependent Claims 2-8, 12, 13, 22 and 23 Under §102(b) Based on Lomas

Dependent claim 2 recites a “teething toy according to claim 1, further comprising artwork that is provided on at least one of said leaves.” In the Final Rejection, the basis for rejecting claim 2 based on Lomas was described as “(a)ny printed matter which is printed on the leaves may be read as ‘artwork.’” This ignores at least two things: (1) the appropriate definition of the word “artwork,” which given its use in the originally filed specification would not cover simple printed text; and (2) the fact that the Lomas reference does not disclose any artwork printed on the stack of sheets that are bound together using the paper stack protection device that is the subject of the patent. Again, a prior art reference anticipates a claim under §102(b) only if the reference discloses, either expressly or inherently, every limitation of the claim. See *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Since every limitation in claim 2 is not disclosed in Lomas, reversal of the §102(b) rejection is respectfully requested.

Dependent claim 3 further limits claim 2 by specifying that the teething element is integrated into the artwork so that the teething element appears to be part of the artwork. Reference must be had to the specification in order to determine the proper interpretation of these limitations. In Figure 6 the teething element 54 is made to appear as if it is part of a pile of hay that a horse in the artwork 52 is preparing to eat. In this embodiment, the teething element 54

may further be colored bright yellow, so as to blend in with the pile of hay 56 that is shown in the artwork 52. In the embodiment that is depicted in Figure 7, the teething element 64 is made to appear to be part of the tree 66, and is preferably colored so as to be bright green. The texture of the teething elements 64 may also be made consistent with the expected leaf like structure of the tree. Clearly, in these figures the teething element is designed so that it is aesthetically incorporated or integrated into the artwork, and this is the meaning that can reasonably be inferred from the language of claim 3. The Lomas reference, of course, discloses nothing that is even remotely similar to this. Accordingly, reversal of the §102 rejection of claim 3 is respectfully requested.

Dependent claim 4 further limits claim 1 by specifying that the leaf has a corner area, and that the teething element is secured to the corner area. In Lomas, the paper stack protection device 10 is not secured to the corner area of the paper sheets that are being protected by the device, but rather to the sheets some distance away from the corner where the staple penetrates the sheets. Accordingly, reversal of the rejection of claim 4 is respectfully requested.

Dependent claim 5 further limits claim 1 by specifying that the teething element is shaped so as not to substantially extend outwardly from the leaves. In Lomas, the paper stack protection device 10 extends substantially in all directions away from each individual paper sheet so that additional sheets can be fitted within the protection device, and, in the embodiment of Figure 4, to permit the corrugation of the device for expandability. Accordingly, Lomas does not anticipate claim 5 and reversal of the rejection is respectfully requested.

Dependent claim 6 further limits claim 1 by specifying at least one of the leaves comprises a cloth material. The comments that were included with the rejection stated that “(t)he leaves are flexible and thin, and thus read as a “cloth-like” material. Applicant respectfully submits that an erroneous standard has been applied by the Examiner in determining the proper interpretation of the word “cloth-like.” Under the Examiner's definition, aluminum foil would be “cloth-like,” as would sandpaper. Based on a reasonable reading of Applicant's specification,

which discusses something that is designed to be held by infants and small children, "cloth-like" should be defined as meaning something that is soft and textured like cloth. The paper sheets that are held together by the protective device disclosed in Lomas certainly are not cloth-like given any reasonable definition of the term that is consistent with Applicant's specification. Accordingly, reversal of the rejection of claim 6 is respectfully requested.

Dependent claim 7 further limits claim 1 by specifying that a plurality of the teething elements are provided. There is absolutely no disclosure in Lomas that more than one of the protective devices could be used on a stack of sheets. In fact, assuming that it is desirable to be able to actually read the sheets when the protector is attached, there is a clear teaching against placing more than one protective device on a particular stack of sheets. Accordingly, reversal of the rejection of claim 7 is respectfully requested.

Dependent claim 8 further limits claim 1 by specifying that the teething element is textured so as to provide teething relief to an infant or small child when chewed on. The rejection relies on the expandable folds that are provided in the second embodiment of Lomas as a teaching of "texturing." However, by no stretch of imagination can the expandable folds, which are made of paper and oriented in the wrong plane for teething, be considered texturing for the purpose of teething relief. Even if an infant or small child could manage to place his or her gums on the expandable folds of the Lomas article, the folds would simply collapse under the pressure. For these reasons, reversal of the rejection of claim 8 is respectfully requested.

Dependent claim 12 further limits claim 1 by specifying that the teething element is positioned in a location so as to also be functional as a gripping aid for aiding users to turn at least one of the leaves. In Lomas, of course, the sheet protection device is slipped over one corner of an entire stack of sheets and a staple is driven through both the device and the sheets to secure the device over the sheets. Obviously, the sheet protection device in Lomas cannot be used to turn the sheets, because it is used to secure all the sheets together in a location where they cannot be

turned with respect to each other. For this reason, reversal of the rejection that was applied to claim 12 is respectfully requested.

Dependent claim 13 further limits claim 12 by specifying that the teething element is weighted to keep the book like structure from closing when it is laid open. In Lomas, the sheet protection device is secured to the stack of sheets in such a way as to prevent the stack of sheets from being open at all at the point of attachment. Accordingly, is impossible for the Lomas sheet protection device to weight the stack of sheets so as to keep the stack of sheets from closing when they are laid in an open position. Accordingly, reversal of the rejection of claim 13 is respectfully requested.

Dependent claim 22 further limits claim 1 by specifying that the teether element is fabricated from a non-toxic resilient elastomeric material. Although the text of the rejection posits that the protection device 10 in Lomas is elastomeric, there is absolutely no disclosure in reference to support this. The only disclosure in Lomas having anything to do with the material from which the protection device 10 is fabricated clearly states that the device is made of paper, and preferably colored paper at that. Lomas does not disclose or suggest a teether element at all, and certainly not a teether element that is fabricated from a non-toxic resilient elastomeric material. Accordingly, reversal of the rejection of claim 22 is respectfully requested.

Dependent claim 23 further limits claim 22 by specifying that the teether element has a textured surface thereon for facilitating teething. Like the rejection of claim 8, this rejection apparently relies on the expandable folds that are provided in the second embodiment of Lomas as a teaching of "texturing." However, as in claim 8, by no stretch of imagination can the expandable folds, which are made of paper and oriented in the wrong plane for teething, be considered texturing for the purpose of teething relief. Even if an infant or small child could manage to place his or her gums on the expandable folds of the Lomas article, the folds would simply collapse under the pressure. For these reasons, reversal of the rejection of claim 23 is respectfully requested.

E. The Rejection of Independent Claim 14 Under §102(b) Based on Lomas

Independent claim 14 reads as follows:

14. A book-like article for small children, comprising:
a plurality of leaves;
binding means for binding said leaves together as a book; and
gripping means, secured near an outer edge of at least one of said leaves,
for providing enhanced grippability to the leaf, said gripping means
comprising teething means for permitting an infant to safely teethe thereon,
said teething means being fabricated from a nontoxic material and being sized
and dimensioned to be comfortably inserted into an infant's mouth for teething
purposes and further having no sharp edges capable of injuring an infant,
whereby a small child will be able to teethe and to easily turn the leaves of the
book-like article like a book.

The following is a list of limitations in claim 14 that are not disclosed, either expressly or inherently, in Lomas:

1. The presence of a book like article that is for small children. Lomas instead discloses a protector for a stack of sheets of paper, such as would be used in an office environment.
2. A binding means for binding leaves together as a book. Instead, the protector disclosed in Lomas works in conjunction with a staple to secure one corner of a stack of paper sheets together. There is no binding in the sense of the normal definition of the term and as the term is used in Applicant's specification.
3. Lomas discloses no gripping means that provide enhanced grippability for any one leaf. The protector disclosed in Lomas is secured to a whole stack of leaves or

sheets, meaning that it cannot be used to effectively grip any one of the leaves or sheets.

4. Lomas does not disclose or suggest in any way a teething means. Instead it discloses a paper stack protection device for securing a number of pages together with a staple so that the pages do not become disattached from the staple and from each other. This device is made from a material (paper) that renders it unsuitable and dangerous to be used as a teething element. Moreover, it has two staple ends protruding from one of its sides, making it even more unsuitable for use as a teething element. Finally, the paper material is disclosed as preferably being color-coded, meaning that it has been dyed, making it even more dangerous for small children and further teaching away from any possible use of this device as a teething element.
5. *Ipso facto*, Lomas does not teach a teething element that is fabricated from a non-toxic material. In fact, the device that is disclosed in this reference is fabricated from a colored paper material that would be expected to have an unacceptable level of toxicity for use with small children.
6. There is no teaching in Lomas of a teething element that is sized and dimensioned to be comfortably inserted into an infant's mouth for teething purposes.
7. There is no teaching in Lomas of a teething element that is constructed so as to have no sharp edges capable of injuring an infant. To the contrary, two sharp metal staple ends extend from the device in Lomas that the rejection has interpreted as being a teething element.

Accordingly, as was the case in claim 1, Lomas fails to disclose or suggest either expressly or inherently not one, but several limitations that are contained in independent claim 14. Applicant

recognizes that during the patent examination process claims are given their broadest reasonable meaning. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). However, as was explained by the Federal Circuit in *Rowe v. Dror*, 112 F.3d 473, 478, 42 USPQ2d 1550, 1553 (Fed. Cir. 1997), this does not relieve the PTO of its essential task of examining the entire patent disclosure to discern the meaning of claim words and phrases. See *In re Bulloch*, 604 F.2d 1362, 1365, 203 USPQ 171, 174 (CCPA 1979) (looking to specification and record to discern what the applicant claimed). It is absolutely clear from Applicant's specification that the term "book like" means something that is like a book, meaning that the pages can be turned. The term "binding means for binding said leaves together as a book" is clearly describing a book-type binding, and not a stapling together of one corner of a stack of sheet of papers as is disclosed in Lomas. It is further clear that the gripping means must be arranged to provide enhanced grippability to a leaf, not to a stack of leaves or to the book like article as a whole. "Teething means" must be properly defined to be limited to structure that is designed specifically for the purpose of teething by an infant or small child and that is safe for this purpose. Guidance as to the meaning of the phrase "sized and dimensioned to be comfortably inserted into an infant's mouth for teething purposes" is clearly defined on page 5 of Applicant's originally filed specification:

Teething element 26 is further sized and configured so as not to present a choking hazard to an infant or small child. In the preferred embodiment, the teething element 26 is so sized and configured so as not to be capable of entering and penetrating to its full depth an opening in a test fixture that is 30 mm in depth, 35 mm in height, and 50 mm in width, with the ends of the width being curved at a radius of 17.5 mm. To further ensure that teething elements 26 is sized and configured so as not to present a choking hazard to an infant or small child, it is also sized and configured so as not to enter and penetrate to its full depth a cylindrical cavity in a test fixture that has a depth of 30 mm, and a circular opening having a diameter of 42.7 mm. The aforementioned criteria are consistent with the guidelines of the Consumer Product Safety Commission and the American Society of Testing and Materials.

A prior art reference anticipates a claim under §102(b) only if the reference discloses, either expressly or inherently, every limitation of the claim. See *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “[A]bsence from the reference of any claimed element negates anticipation.” *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571, 230 USPQ 81, 84 (Fed. Cir. 1986).

Considering the proper meaning of the words and phrases of claim 14, discerned from inspecting the originally filed specification, Applicant respectfully submits that it becomes quite clear that claim 14 is not anticipated under §102(b) based on Lomas. Accordingly, reversal of the rejection is respectfully requested.

F. The Rejection of Dependent Claims 16, 17, 24 and 25 Under §102(b) Based on Lomas

Dependent claim 16 further limits claim 14 by specifying that the gripping means is secured near a corner portion of the leaf. In Lomas, the paper stack protection device 10 is not secured to the corner area of the paper sheets that are being protected by the device, but rather to the sheets some distance away from the corner where the staple penetrates the sheets. Accordingly, reversal of the rejection of claim 16 is respectfully requested.

Dependent claim 17 further limits claim 14 by specifying that the gripping means is fabricated from a resilient material that is nontoxic. In Lomas, the protection device 10 is fabricated out of paper. It is clearly not a resilient material, and it is not nontoxic. Accordingly, reversal of the rejection of claim 17 is respectfully requested.

Dependent claim 24 further limits claim 14 by stating that the teething means is fabricated from a non-toxic resilient elastomeric material. Although the text of the rejection posits that the protection device 10 in Lomas is elastomeric, there is absolutely no disclosure in reference to support this. The only disclosure in Lomas having anything to do with the material from which the protection device 10 is fabricated clearly states that the device is made of paper, and preferably colored paper at that. Lomas does not disclose or suggest a teether element at all, and

certainly not a teether element that is fabricated from a non-toxic resilient elastomeric material. Accordingly, reversal of the rejection of claim 24 is respectfully requested.

Dependent claim 25 further limits claim 24 by specifying that the teether element has a textured surface thereon for facilitating teething. Like the rejection of claims 8 and 23, this rejection apparently relies on the expandable folds that are provided in the second embodiment of Lomas as a teaching of "texturing." However, as in claim 8, by no stretch of imagination can the expandable folds, which are made of paper and oriented in the wrong plane for teething, be considered texturing for the purpose of teething relief. Even if an infant or small child could manage to place his or her gums on the expandable folds of the Lomas article, the folds would simply collapse under the pressure. For these reasons, reversal of the rejection of claim 25 is respectfully requested.

G. The Rejection of Independent Claim 26 Under §102(b) Based on Lomas

Independent claim 26 reads as follows:

26. A teething toy, comprising:
a book-like structure having a plurality of leaves, said leaves being fabricated from a material comprising cloth; and
teething means attached to at least one of said leaves, said teething means being fabricated from a non-toxic resilient elastomeric material and being sized and dimensioned to be comfortably inserted into an infant's mouth for teething purposes, said teething means further having no sharp edges capable of injuring an infant, whereby it will be safe for an infant or small child to place his or her mouth on said teething means.

The following is a list of limitations in claim 26 that are not disclosed, either expressly or inherently, in Lomas:

1. It is clear from even a quick review of the reference that Lomas fails to disclose either expressly or inherently a "teething toy" as is set forth in the preamble of independent claim 26.

2. The presence of a book like structure that is for small children. Lomas instead discloses a protector for a stack of sheets of paper, such as would be used in an office environment.
3. Leaves that are fabricated from a material including cloth. The comments that were included with the rejection stated that “(t)he leaves are flexible and thin, and thus read as a “cloth-like” material. Applicant respectfully submits that an erroneous standard has been applied by the Examiner in determining the proper interpretation of the word “cloth-like.” Under the Examiner's definition, aluminum foil would be “cloth-like,” as would sandpaper.
4. Lomas does not disclose or suggest in any way a teething means. Instead it discloses a paper stack protection device for securing a number of pages together with a staple so that the pages do not become disattached from the staple and from each other. This device is made from a material (paper) that renders it unsuitable and dangerous to be used as a teething element. Moreover, it has two staple ends protruding from one of its sides, making it even more unsuitable for use as a teething element. Finally, the paper material is disclosed as preferably being color-coded, meaning that it has been dyed, making it even more dangerous for small children and further teaching away from any possible use of this device as a teething element.
5. *Ipso facto*, Lomas does not teach a teething element that is fabricated from a non-toxic material. In fact, the device that is disclosed in this reference is fabricated from a colored paper material that would be expected to have an unacceptable level of toxicity for use with small children.
6. There is no teaching in Lomas of a teething element that is sized and dimensioned to be comfortably inserted into an infant's mouth for teething purposes.

7. There is no teaching in Lomas of a teething element that is constructed so as to have no sharp edges capable of injuring an infant. To the contrary, two sharp metal staple ends extend from the device in Lomas that the rejection has interpreted as being a teething element.

Accordingly, as was the case in independent claims 1 and 14, Lomas fails to disclose or suggest either expressly or inherently not one, but several limitations that are contained in independent claim 26. Again, Applicant recognizes that during the patent examination process claims are given their broadest reasonable meaning. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). However, as was explained by the Federal Circuit in *Rowe v. Dror*, 112 F.3d 473, 478, 42 USPQ2d 1550, 1553 (Fed. Cir. 1997), this does not relieve the PTO of its essential task of examining the entire patent disclosure to discern the meaning of claim words and phrases. See *In re Bulloch*, 604 F.2d 1362, 1365, 203 USPQ 171, 174 (CCPA 1979) (looking to specification and record to discern what the applicant claimed). It is absolutely clear from Applicant's specification that the term "book like" means something that is like a book, meaning that the pages can be turned. "Teething means" must be properly defined to be limited to structure that is designed specifically for the purpose of teething by an infant or small child and that is safe for this purpose. Based on a reasonable reading of Applicant's specification, which discusses something that is designed to be held by infants and small children, "cloth-like" should be defined as meaning something that is soft and textured like cloth. The paper sheets that are held together by the protective device disclosed in Lomas certainly are not cloth-like given any reasonable definition of the term that is consistent with Applicant's specification.

Guidance as to the meaning of the phrase "sized and dimensioned to be comfortably inserted into an infant's mouth for teething purposes" is clearly defined on page 5 of Applicant's originally filed specification:

Teething element 26 is further sized and configured so as not to present a choking hazard to an infant or small child. In the preferred embodiment, the teething element 26 is so sized and configured so as not to be capable of entering and penetrating to its full depth an opening in a test fixture that is 30 mm in depth, 35 mm in height, and 50 mm in width, with the ends of the width being curved at a radius of 17.5 mm. To further ensure that teething elements 26 is sized and configured so as not to present a choking hazard to an infant or small child, it is also sized and configured so as not to enter and penetrate to its full depth a cylindrical cavity in a test fixture that has a depth of 30 mm, and a circular opening having a diameter of 42.7 mm. The aforementioned criteria are consistent with the guidelines of the Consumer Product Safety Commission and the American Society of Testing and Materials.

A prior art reference anticipates a claim under §102(b) only if the reference discloses, either expressly or inherently, every limitation of the claim. See *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “[A]bsence from the reference of any claimed element negates anticipation.” *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571, 230 USPQ 81, 84 (Fed. Cir. 1986).

Considering the proper meaning of the words and phrases of claim 26, discerned from inspecting the originally filed specification, Applicant respectfully submits that it becomes quite clear that claim 26 is not anticipated under §102(b) based on Lomas. Accordingly, reversal of the rejection is respectfully requested.

H. The Rejection of Dependent Claims 27-32 Under §102(b) Based on Lomas

Dependent claim 27 further limits claim 26 by specifying that the teether element is fabricated from a non-toxic resilient elastomeric material. Although the text of the rejection posits that the protection device 10 in Lomas is elastomeric, there is absolutely no disclosure in reference to support this. The only disclosure in Lomas having anything to do with the material from which the protection device 10 is fabricated clearly states that the device is made of paper, and preferably colored paper at that. Lomas does not disclose or suggest a teether element at all,

and certainly not a teether element that is fabricated from a non-toxic resilient elastomeric material. Accordingly, reversal of the rejection of claim 22 is respectfully requested.

Dependent claim 28 further limits claim 27 by specifying that the teether element has a textured surface thereon for facilitating teething. Like the rejection of claim 8, this rejection apparently relies on the expandable folds that are provided in the second embodiment of Lomas as a teaching of "texturing." However, as in claim 8, by no stretch of imagination can the expandable folds, which are made of paper and oriented in the wrong plane for teething, be considered texturing for the purpose of teething relief. Even if an infant or small child could manage to place his or her gums on the expandable folds of the Lomas article, the folds would simply collapse under the pressure. For these reasons, reversal of the rejection of claim 28 is respectfully requested.

Dependent claim 29 recites a "teething toy according to claim 26, further comprising artwork that is provided on at least one of said leaves." In the Final Rejection, the basis for rejecting claim 29 based on Lomas was described as "(a)ny printed matter which is printed on the leaves may be read as 'artwork.'" This ignores at least two things: (1) the appropriate definition of the word "artwork," which given its use in the originally filed specification would not cover simple printed text; and (2) the fact that the Lomas reference does not disclose any artwork printed on the stack of sheets that are bound together using the paper stack protection device that is the subject of the patent. Again, a prior art reference anticipates a claim under §102(b) only if the reference discloses, either expressly or inherently, every limitation of the claim. See *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Since every limitation in claim 29 is not disclosed in Lomas, reversal of the §102(b) rejection is respectfully requested.

Dependent claim 30 further limits claim 29 by specifying that the teething element is integrated into the artwork so that the teething element appears to be part of the artwork. Reference must be had to the specification in order to determine the proper interpretation of these

limitations. In Figure 6 the teething element 54 is made to appear as if it is part of a pile of hay that a horse in the artwork 52 is preparing to eat. In this embodiment, the teething element 54 may further be colored bright yellow, so as to blend in with the pile of hay 56 that is shown in the artwork 52. In the embodiment that is depicted in Figure 7, the teething element 64 is made to appear to be part of the tree 66, and is preferably colored so as to be bright green. The texture of the teething elements 64 may also be made consistent with the expected leaf like structure of the tree. Clearly, in these figures the teething element is designed so that it is aesthetically incorporated or integrated into the artwork, and this is the meaning that can reasonably be inferred from the language of claim 30. The Lomas reference, of course, discloses nothing that is even remotely similar to this. Accordingly, reversal of the §102 rejection of claim 30 is respectfully requested.

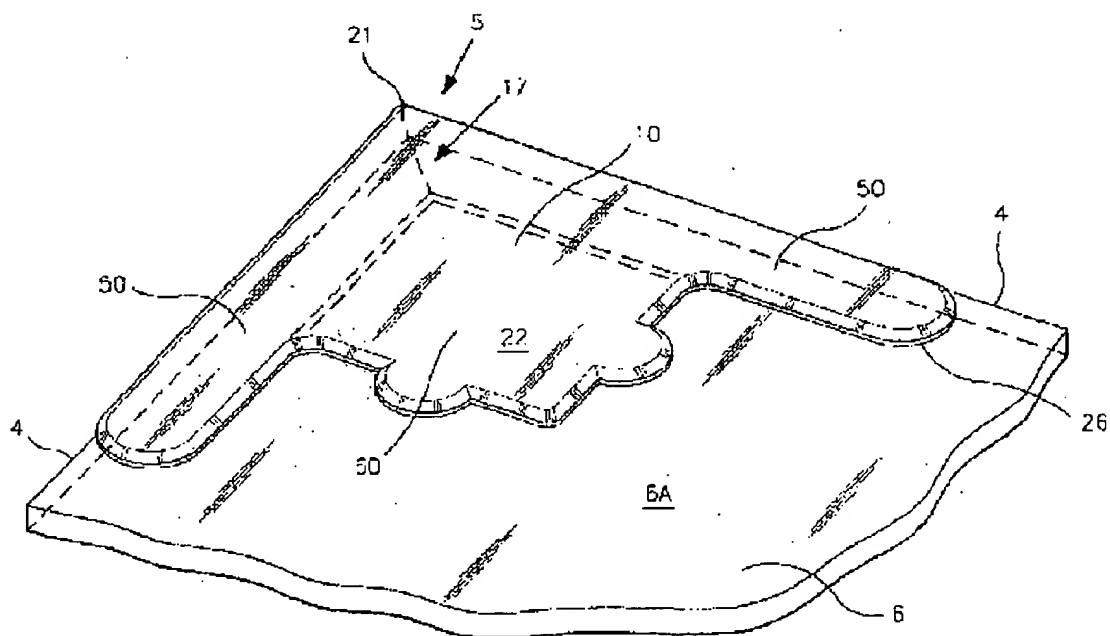
Dependent claim 31 further limits claim 26 by specifying that a plurality of the teething elements are provided. There is absolutely no disclosure in Lomas that more than one of the protective devices could be used on a stack of sheets. In fact, assuming that it is desirable to be able to actually read the sheets when the protector is attached, there is a clear teaching against placing more than one protective device on a particular stack of sheets. Accordingly, reversal of the rejection of claim 31 is respectfully requested.

Dependent claim 32 further limits claim 26 by specifying that the teething element is textured so as to provide teething relief to an infant or small child when chewed on. The rejection relies on the expandable folds that are provided in the second embodiment of Lomas as a teaching of "texturing." However, by no stretch of imagination can the expandable folds, which are made of paper and oriented in the wrong plane for teething, be considered texturing for the purpose of teething relief. Even if an infant or small child could manage to place his or her gums on the expandable folds of the Lomas article, the folds would simply collapse under the pressure. For these reasons, reversal of the rejection of claim 32 is respectfully requested.

**ISSUE 3: HAVE CLAIMS 1, 11, 26 AND 35 BEEN IMPROPERLY REJECTED UNDER
35 U.S.C. §102(B) BASED ON U.S. PATENT 5,626,366 TO LEE (“LEE”)?**

A. The Lee Reference

U.S. patent 5,626,366 to Lee (hereinafter "Lee") discloses a protective corner guard for pages or book covers, especially in flexible book covers such as is used on paperback books. The protective corner guard disclosed in Lee includes a guard body 10 having an adhesive bottom surface layer and a pair of orthogonal fold lines that intersect at a point 21 to form a guard corner 17. The corner guard is disclosed as possibly being fabricated from any one of a variety of different reinforced flat sheet materials, such as plastic, cardboard, coated paper, sheet metal or stiff leather. In the illustrated embodiment it appears to be fabricated from sheet metal. Figure 1 of the Lee reference is reproduced below.



B. The §102 Rejection

The text of the §102 reference based on Lee reads as follows:

Claims 1, 11, 26 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee. Lee discloses a book like structure with an element (10) attached thereto. The element (10) may include a tether (82). The element is physically capable of being teethed.

C. The Rejection Of Claims 1 and 11 under §102 Based On Lee

Independent claim 1 reads as follows:

1. A teething toy, comprising:
a book-like structure having a plurality of leaves; and
a teething element that is attached to at least one of said leaves, said teething element being fabricated from a non-toxic material and being sized and dimensioned to be comfortably inserted into an infant's mouth for teething purposes, said teething element further having no sharp edges capable of injuring an infant, whereby it will be safe for an infant or small child to place his or her mouth on said teething element.

A prior art reference anticipates a claim under §102(b) only if the reference discloses, either expressly or inherently, every limitation of the claim. See *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “[A]bsence from the reference of any claimed element negates anticipation.” *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571, 230 USPQ 81, 84 (Fed. Cir. 1986).

The following is a list of limitations in claim 1 that are not disclosed, either expressly or inherently, in Lee:

1. It is clear from even a quick review of the reference that Lee fails to disclose either expressly or inherently a “teething toy” as is set forth in the preamble of independent claim 1.
2. Lee does not disclose or suggest either expressly or inherently a teething element. Instead, it discloses a corner guard for a page or a cover of a printed publication.

The corner guard disclosed in Lee is unsuitable as a teething element because of its size, its hardness, the fact that it has a sharp edge and the material from which it is made.

3. Lee certainly does not disclose a teething element that is fabricated from a non-toxic material. All of the different potential materials disclosed in the reference, including plastic, cardboard, coated paper, sheet metal and leather may include toxic residues such as monomers, dyes, lubricants, trace residues of potentially harmful materials such as lead, and tanning agents. A non-toxic material in the context of infant teething products is a material that is specifically manufactured to be non-toxic.
4. The corner guard disclosed in Lee is not sized and dimensioned to be comfortably inserted into an infant's mouth for teething purposes.
5. The corner guard disclosed in Lee is folded such a manner as to create a sharp edge at the outer corner of the corner guard. Accordingly, Lee does not satisfy the limitations in claim 1 that the teething element has no sharp edges that are capable of injuring an infant.

Accordingly, Lee fails to disclose or suggest either expressly or inherently not one, but several limitations that are contained in independent claim 1. Applicant recognizes that during the patent examination process claims are given their broadest reasonable meaning. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). However, as was explained by the Federal Circuit in *Rowe v. Dror*, 112 F.3d 473, 478, 42 USPQ2d 1550, 1553 (Fed. Cir. 1997), this does not relieve the PTO of its essential task of examining the entire patent disclosure to discern the meaning of claim words and phrases. See *In re Bulloch*, 604 F.2d 1362, 1365, 203 USPQ 171, 174 (CCPA 1979) (looking to specification and record to discern what the applicant claimed).

It is absolutely clear from Applicant's specification that the term "toy" is limited to an article that is intended for use by a child. The article disclosed in the Lee patent is not a toy in any sense of the word. Instead, it is a protective corner guard for a book. Presumably, if a parent or caregiver wanted to preserve a particular book enough to install the corner guard disclosed in Lee, he or she would also keep that book away from any young children.

It is further clear that "teething element" is properly defined to be limited to structure that is designed specifically for the purpose of teething by an infant or small child and that is safe for this purpose. Applicant's specification uses the term "teething element" to refer only to that structure that is specifically designed for teething. Although other parts of Applicant's invention could conceivably be used for teething, these are not referred to as "teething elements." In the United States, there are strict guidelines promulgated by the Consumer Product Safety Commission (see below) that dictate what can and what cannot be sold as a teething element. Clearly, the position of the rejection that the corner guard disclosed in Lee is inherently a teething element is inconsistent with the definition of the term as it is used in the application and as it is used in the industry.

Guidance as to the meaning of the phrase "sized and dimensioned to be comfortably inserted into an infant's mouth for teething purposes" is clearly provided on page 5 of Applicant's originally filed specification:

Teething element 26 is further sized and configured so as not to present a choking hazard to an infant or small child. In the preferred embodiment, the teething element 26 is so sized and configured so as not to be capable of entering and penetrating to its full depth an opening in a test fixture that is 30 mm in depth, 35 mm in height, and 50 mm in width, with the ends of the width being curved at a radius of 17.5 mm. To further ensure that teething elements 26 is sized and configured so as not to present a choking hazard to an infant or small child, it is also sized and configured so as not to enter and penetrate to its full depth a cylindrical cavity in a test fixture that has a depth of 30 mm, and a circular opening having a diameter of 42.7 mm. The aforementioned criteria are consistent

with the guidelines of the Consumer Product Safety Commission and the American Society of Testing and Materials.

Clearly, there is no disclosure or suggestion in the Lee reference that the corner guard is sized and dimensioned to be comfortably inserted into an infant's mouth for teething purposes as claim 1 requires.

Considering the proper meaning of the words and phrases of claim 1 that must be discerned from inspecting the originally filed specification, Applicant respectfully submits that it becomes quite clear that claim 1 is not anticipated under §102(b) based on Lee. Accordingly, reversal of the rejection is respectfully requested.

Dependent claim 11 further limits claim 1 by specifying that the teething element is secured to one of the leaves by a tether. Lee discloses nothing of the kind. The rejection apparently relies on the embodiment of Figure 11, in which a bookmark leash 82 is attached to one of the folded over tabs 40 of the corner guard. There is no disclosure of any teething element, and certainly not a teething element that is secured a book with a tether. Even if the corner guard disclosed in Lee could properly be considered a teething element, it would have to be positioned on a remote end of the bookmark leash 82 in order to meet the limitations of claim 11, rather than the leash not being connected to anything at its remote end, which is what is actually disclosed in the reference. Accordingly, reversal of the rejection of claim 11 is respectfully requested.

D. The Rejection Of Claims 26 and 35 under §102 Based On Lee

Independent claim 26 reads as follows:

26. A teething toy, comprising:
a book-like structure having a plurality of leaves, said leaves being fabricated from a material comprising cloth; and

teething means attached to at least one of said leaves, said teething means being fabricated from a non-toxic resilient elastomeric material and being sized and dimensioned to be comfortably inserted into an infant's mouth for teething purposes, said teething means further having no sharp edges capable of injuring an infant, whereby it will be safe for an infant or small child to place his or her mouth on said teething means.

The following is a list of limitations in claim 26 that are not disclosed, either expressly or inherently, in Lee:

1. It is clear from even a quick review of the reference that Lee fails to disclose either expressly or inherently a “teething toy” as is set forth in the preamble of independent claim 26.
2. Leaves that are fabricated from a material including cloth. This is not disclosed or suggested anywhere in the Lee reference, and it would apparently be inconsistent with the presence of the corner guard because cloth materials are generally not used in books for grown-ups that would benefit from such corner guards.
3. Lee does not disclose or suggest in any way a teething means. Instead, it discloses a corner guard for a page or a cover of a printed publication. The corner guard disclosed in Lee is unsuitable as a teething element because of its size, its hardness, the fact that it has a sharp edge and the material from which it is made.
4. *Ipso facto*, Lee does not teach a teething element that is fabricated from a non-toxic resilient elastomeric material. All of the different potential materials disclosed in the reference, including plastic, cardboard, coated paper, sheet metal and leather (none of which are resilient and elastomeric) may include toxic residues such as monomers, dyes, lubricants, trace residues of potentially harmful materials such as

lead, and tanning agents. A non-toxic material in the context of infant teething products is a material that is specifically manufactured to be non-toxic.

5. The corner guard disclosed in Lee is folded such a manner as to create a sharp edge at the outer corner of the corner guard. Accordingly, Lee does not satisfy the limitations in claim 26 that the teething element has no sharp edges that are capable of injuring an infant.

Accordingly, Lee fails to disclose or suggest either expressly or inherently not one, but several limitations that are contained in independent claim 26. Again, Applicant recognizes that during the patent examination process claims are given their broadest reasonable meaning. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). However, as was explained by the Federal Circuit in *Rowe v. Dror*, 112 F.3d 473, 478, 42 USPQ2d 1550, 1553 (Fed. Cir. 1997), this does not relieve the PTO of its essential task of examining the entire patent disclosure to discern the meaning of claim words and phrases. See *In re Bulloch*, 604 F.2d 1362, 1365, 203 USPQ 171, 174 (CCPA 1979) (looking to specification and record to discern what the applicant claimed).

It is absolutely clear from Applicant's specification that the term "toy" is limited to an article that is intended for use by a child. The article disclosed in the Lee patent is not a toy in any sense of the word. Instead, it is a protective corner guard for a book. Presumably, if a parent or caregiver wanted to preserve a particular book enough to install the corner guard disclosed in Lee, he or she would also keep that book away from any young children.

It is further clear that "teething element" is properly defined to be limited to structure that is designed specifically for the purpose of teething by an infant or small child and that is safe for this purpose. Applicant's specification uses the term "teething element" to refer only to that structure that is specifically designed for teething. Although other parts of Applicant's invention could conceivably be used for teething, these are not referred to as "teething elements." In the

United States, there are strict guidelines promulgated by the Consumer Product Safety Commission (see below) that dictate what can and what cannot be sold as a teething element. Clearly, the position of the rejection that the corner guard disclosed in Lee is inherently a teething element is inconsistent with the definition of the term as it is used in the application and as it is used in the industry.

There is no ambiguity at all in the limitation in claim 26 that the leaves of the book like structure are fabricated from a material comprising cloth. The pages in the book that is disclosed in Lee clearly are not cloth.

Guidance as to the meaning of the phrase “sized and dimensioned to be comfortably inserted into an infant's mouth for teething purposes” is clearly provided on page 5 of Applicant’s originally filed specification:

Teething element 26 is further sized and configured so as not to present a choking hazard to an infant or small child. In the preferred embodiment, the teething element 26 is so sized and configured so as not to be capable of entering and penetrating to its full depth an opening in a test fixture that is 30 mm in depth, 35 mm in height, and 50 mm in width, with the ends of the width being curved at a radius of 17.5 mm. To further ensure that teething elements 26 is sized and configured so as not to present a choking hazard to an infant or small child, it is also sized and configured so as not to enter and penetrate to its full depth a cylindrical cavity in a test fixture that has a depth of 30 mm, and a circular opening having a diameter of 42.7 mm. The aforementioned criteria are consistent with the guidelines of the Consumer Product Safety Commission and the American Society of Testing and Materials.

Clearly, there is no disclosure or suggestion in the Lee reference that the corner guard is sized and dimensioned to be comfortably inserted into an infant's mouth for teething purposes as claim 1 requires.

A prior art reference anticipates a claim under §102(b) only if the reference discloses, either expressly or inherently, every limitation of the claim. See *Verdegaal Bros., Inc. v. Union*

Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “[A]bsence from the reference of any claimed element negates anticipation.” *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571, 230 USPQ 81, 84 (Fed. Cir. 1986).

Considering the proper meaning of the words and phrases of claim 26, discerned from inspecting the originally filed specification, Applicant respectfully submits that it becomes quite clear that claim 26 is not anticipated under §102(b) based on Lee. Accordingly, reversal of the rejection is respectfully requested.

Dependent claim 35 further limits claim 26 by specifying that the teething means is secured to one of the leaves by a tether. Again, this is not disclosed or suggested either explicit were inherently by the Lee reference. The rejection apparently relies on the embodiment of Figure 11, in which a bookmark leash 82 is attached to one of the folded over tabs 40 of the corner guard. There is no disclosure of any teething element, and certainly not a teething element that is secured a book with a tether. Even if the corner guard disclosed in Lee could properly be considered a teething element, it would have to be positioned on a remote end of the bookmark leash 82 in order to meet the limitations of claim 35, rather than the leash not being connected to anything at its remote end, which is what is actually disclosed in the reference. Accordingly, reversal of the rejection of claim 35 is respectfully requested.

**ISSUE 4: HAVE CLAIMS 9, 10, 33 AND 34 BEEN IMPROPERLY REJECTED UNDER
35 U.S.C. §103(A) BASED ON LOMAS?**

A. The §103 Rejection

The text of the §103 reference based on Lomas reads as follows:

Lomas differs from claims 9 and 10 and that the element shown by Lomas is not attributed a specific size. However, forming the element with the sizes recited in claims 9 and 10 would have been obvious to one having ordinary skill in the art as a choice of design.

Before addressing the specific claim limitations, Applicant would like to point that it is well-established that to rely on a reference under §103 the reference must be analogous prior art. This principle is well described in MPEP 2141.01(a):

2141.01(a) Analogous and Nonanalogous Art

**TO RELY ON A REFERENCE UNDER 35 U.S.C. 103, IT MUST BE
ANALOGOUS PRIOR ART**

The examiner must determine what is "analogous prior art" for the purpose of analyzing the obviousness of the subject matter at issue. "In order to rely on a reference as a basis for rejection of an Applicant's invention, the reference must either be in the field of Applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." In re Oetiker, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also In re Deminski, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); In re Clay, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992) ("A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem."); and Wang Laboratories Inc. v. Toshiba Corp., 993 F.2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993).

Clearly, by no stretch of the imagination is Lomas analogous prior art Applicant's

invention. Lomas, as is described in detail above in Applicant's arguments regarding the §102 rejection, discloses a paper stack protection device that slips over a stack of papers and is secured to the papers by a staple. Applicant's invention relates to a teether book for infants and small children. Because it is not analogous to Applicant's invention, Lomas cannot be appropriately used in a §103 rejection of Applicant's claims.

B. The Rejection Of Claims 9, 10, 33 and 34 Based On Lomas

The rejected claims read as follows:

9. A teething toy according to claim 1, wherein said teething element is sized and configured so as not to be capable of entering and penetrating to its full depth an opening in a test fixture that is 30 mm in depth, 35 mm in height, and 50 mm in width, with the ends of the width being curved at a radius of 17.5 mm.

10. A teething toy according to claim 1, wherein said teething element is sized and configured so as not to enter and penetrate to its full depth a cylindrical cavity in a test fixture that has a depth of 30 mm, and a circular opening having a diameter of 42.7 mm

33. A teething toy according to claim 26, wherein said teething means is sized and configured so as not to be capable of entering and penetrating to its full depth an opening in a test fixture that is 30 mm in depth, 35 mm in height, and 50 mm in width, with the ends of the width being curved at a radius of 17.5 mm.

34. A teething toy according to claim 26, wherein said teething means is sized and configured so as not to enter and penetrate to its full depth a cylindrical cavity in a test fixture that has a depth of 30 mm, and a circular opening having a diameter of 42.7 mm

As Applicant has pointed out in detail above, Lomas fails to disclose or suggest either explicitly or inherently many of the limitations that are contained in independent claim 1, from which claims 9 and 10 depend, and independent claim 26, from which claims 33 and 34 depend.

At the risk of being overly redundant, the following is a list of limitations in claim 1 that are not disclosed, either expressly or inherently, in Lomas:

1. It is clear from even a quick review of the reference that Lomas fails to disclose either expressly or inherently a “teething toy” as is set forth in the preamble of independent claim 1.
2. Lomas does not disclose a book like structure having a plurality of leaves. Books are bound so that their pages can be turned and read. The device disclosed in Lomas, to the contrary, is designed to keep a number of pages secured together with a staple.
3. Lomas does not disclose or suggest in any way a teething element. Instead it discloses a paper stack protection device for securing a number of pages together with a staple so that the pages do not become disattached from the staple and from each other. This device is made from a material (paper) that renders it unsuitable and dangerous to be used as a teething element. Moreover, it has two staple ends protruding from one of its sides, making it even more unsuitable for use as a teething element. Finally, the paper material is disclosed as preferably being color-coded, meaning that it has been dyed, making it even more dangerous for small children and further teaching away from any possible use of this device as a teething element.
4. *Ipso facto*, Lomas does not teach a teething element that is fabricated from a non-toxic material. In fact, the device that is disclosed in this reference is fabricated from a colored paper material that would be expected to have an unacceptable level of toxicity for use with small children.
5. There is no teaching in Lomas of a teething element that is sized and dimensioned to be comfortably inserted into an infant's mouth for teething purposes.
6. There is no teaching in Lomas of a teething element that is constructed so as to have no sharp edges capable of injuring an infant. To the contrary, two sharp metal staple

ends extend from the device in Lomas that the rejection has interpreted as being a teething element.

In addition to the deficiencies of the disclosure of Lomas with regard to independent claim 1, claims 9 and 10 both add significant additional limitations that pertain to the size of the teething element. As Applicant has explained in the specification, these sizing criteria are consistent with the guidelines of the Consumer Product Safety Commission and the American Society of Testing and Materials.

As Applicant notes above, Lomas is clearly not analogous prior art to Applicants invention and for that reason alone the §103 rejection must be overturned. In addition, there is absolutely no disclosure, suggestion or incentive given in Lomas that the paper stack protector is sized to be within the claimed dimensions of either claim 9 or claim 10. Nor would a person having ordinary skill in Applicant's field of endeavor have been led to so size the paper stack protector in order to fall within the guidelines for teething elements, because there is nothing in the disclosure of the Lomas reference that pertains in any way to teething elements.

For these reasons, Applicant respectfully submits that the §103 rejections of claims 9 and 10 were inappropriate, and should be reversed.

Similarly, the following is a list of limitations in claim 26 that are not disclosed, either expressly or inherently, in Lomas:

1. It is clear from even a quick review of the reference that Lomas fails to disclose either expressly or inherently a "teething toy" as is set forth in the preamble of independent claim 26.
2. The presence of a book like structure that is for small children. Lomas instead discloses a protector for a stack of sheets of paper, such as would be used in an office environment.

3. Leaves that are fabricated from a material including cloth. The comments that were included with the rejection stated that “(t)he leaves are flexible and thin, and thus read as a “cloth-like” material. Applicant respectfully submits that an erroneous standard has been applied by the Examiner in determining the proper interpretation of the word “cloth-like.” Under the Examiner's definition, aluminum foil would be “cloth-like,” as would sandpaper.
4. Lomas does not disclose or suggest in any way a teething means. Instead it discloses a paper stack protection device for securing a number of pages together with a staple so that the pages do not become disattached from the staple and from each other. This device is made from a material (paper) that renders it unsuitable and dangerous to be used as a teething element. Moreover, it has two staple ends protruding from one of its sides, making it even more unsuitable for use as a teething element. Finally, the paper material is disclosed as preferably being color-coded, meaning that it has been dyed, making it even more dangerous for small children and further teaching away from any possible use of this device as a teething element.
5. *Ipso facto*, Lomas does not teach a teething element that is fabricated from a non-toxic material. In fact, the device that is disclosed in this reference is fabricated from a colored paper material that would be expected to have an unacceptable level of toxicity for use with small children.
6. There is no teaching in Lomas of a teething element that is sized and dimensioned to be comfortably inserted into an infant's mouth for teething purposes.
7. There is no teaching in Lomas of a teething element that is constructed so as to have no sharp edges capable of injuring an infant. To the contrary, two sharp

metal staple ends extend from the device in Lomas that the rejection has interpreted as being a teething element.

In addition to the deficiencies of the disclosure of Lomas with regard to independent claim 26, claims 33 and 34 both add significant additional limitations that pertain to the size of the teething element. As Applicant has explained in the specification, these sizing criteria are consistent with the guidelines of the Consumer Product Safety Commission and the American Society of Testing and Materials.

As Applicant notes above, Lomas is clearly not analogous prior art to Applicants invention and for that reason alone the §103 rejection must be overturned. In addition, there is absolutely no disclosure, suggestion or incentive given in Lomas that the paper stack protector is sized to be within the claimed dimensions of either claim 33 or claim 34. Nor would a person having ordinary skill in Applicant's field of endeavor have been led to so size the paper stack protector in order to fall within the guidelines for teething elements, because there is nothing in the disclosure of the Lomas reference that pertains in any way to teething elements.

For these reasons, Applicant respectfully submits that the §103 rejections of claims 33 and 34 were inappropriate, and should be reversed.

VII. CONCLUSION

For the foregoing reasons, Appellant respectfully submits that each of the rejections should be reversed, and all claims allowed, and such a decision is respectfully solicited.

Respectfully submitted,

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APPENDIX- CLAIMS ON APPEAL

1. A teething toy, comprising:
 - a book-like structure having a plurality of leaves; and
 - a teething element that is attached to at least one of said leaves, said teething element being fabricated from a non-toxic material and being sized and dimensioned to be comfortably inserted into an infant's mouth for teething purposes, said teething element further having no sharp edges capable of injuring an infant, whereby it will be safe for an infant or small child to place his or her mouth on said teething element.
2. A teething toy according to claim 1, further comprising artwork that is provided on at least one of said leaves.
3. A teething toy according to claim 2, wherein said teething element is integrated into said artwork so that said teething element appears to be part of said artwork.
4. A teething toy according to claim 1, wherein said at least one leaf has a corner area, and wherein said teething element is secured to said corner area.
5. A teething toy according to claim 1, wherein said teething element is shaped so as not to substantially extend outwardly from said leaves.
6. A teething toy according to claim 1, wherein at least one of said leaves comprises a cloth material.
7. A teething toy according to claim 1, wherein a plurality of said teething elements are provided.

8. A teething toy according to claim 1, wherein said teething element is textured so as to provide teething relief to an infant or small child when chewed on.

9. A teething toy according to claim 1, wherein said teething element is sized and configured so as not to be capable of entering and penetrating to its full depth an opening in a test fixture that is 30 mm in depth, 35 mm in height, and 50 mm in width, with the ends of the width being curved at a radius of 17.5 mm.

10. A teething toy according to claim 1, wherein said teething element is sized and configured so as not to enter and penetrate to its full depth a cylindrical cavity in a test fixture that has a depth of 30 mm, and a circular opening having a diameter of 42.7 mm

11. A teething toy according to claim 1, wherein said teething element is secured to one of said leaves by a tether.

12. A teething toy according to claim 1, wherein said teething element is positioned in a location so as to also be functional as a gripping aid for aiding users to turn at least one of the leaves.

13. A teething toy according to claim 12, wherein said teething element is weighted to keep the book-like structure from closing when it is laid open.

14. A book-like article for small children, comprising:

a plurality of leaves;

binding means for binding said leaves together as a book; and

gripping means, secured near an outer edge of at least one of said leaves, for providing enhanced grippability to the leaf, said gripping means comprising teething means for permitting an

infant to safely teethe thereon, said teething means being fabricated from a nontoxic material and being sized and dimensioned to be comfortably inserted into an infant's mouth for teething purposes and further having no sharp edges capable of injuring an infant, whereby a small child will be able to teethe and to easily turn the leaves of the book-like article like a book.

16. A book-like article according to claim 14, wherein said gripping means is secured near a corner portion of the leaf.

17. A book-like article according to claim 14, wherein said gripping means is fabricated from a resilient material that is nontoxic.

18. A book-like article for small children, comprising:

a plurality of leaves;

binding means for binding said leaves together as a book; and

leaf weight means, secured near an outer edge of at least one of said leaves, for providing enhanced weight to the outer edge area of the leaf, said leaf weight means comprising teething means for permitting an infant to safely teethe thereon, said teething means being fabricated from a nontoxic material and being sized and dimensioned to be comfortably inserted into an infant's mouth for teething purposes and further having no sharp edges capable of injuring an infant, whereby the book-like article will function as a teether and be discouraged from closing when it is laid open in a given position.

20. A book-like article according to claim 18, wherein said leaf weight means is secured near a corner portion of the leaf.

21. A book-like article according to claim 18, wherein said leaf weight means is fabricated from a

resilient material that is nontoxic.

22. A teething toy according to claim 1, wherein said teether element is fabricated from a nontoxic resilient elastomeric material.

23. A teething toy according to claim 22, wherein said teether element has a textured surface thereon for facilitating teething.

24. A teething toy according to claim 14, wherein said teething means is fabricated from a nontoxic resilient elastomeric material.

25. A teething toy according to claim 24, wherein said teething means has a textured surface thereon for facilitating teething.

26. A teething toy, comprising:

a book-like structure having a plurality of leaves, said leaves being fabricated from a material comprising cloth; and

teething means attached to at least one of said leaves, said teething means being fabricated from a non-toxic resilient elastomeric material and being sized and dimensioned to be comfortably inserted into an infant's mouth for teething purposes, said teething means further having no sharp edges capable of injuring an infant, whereby it will be safe for an infant or small child to place his or her mouth on said teething means.

27. A teething toy according to claim 26, wherein said teething means is fabricated from a nontoxic resilient elastomeric material.

28. A teething toy according to claim 27, wherein said teething means has a textured surface thereon for facilitating teething.

29. A teething toy according to claim 26, wherein further comprising artwork that is provided on at least one of said leaves.

30. A teething toy according to claim 29, wherein said teething means is integrated into said artwork so that said teething means appears to be part of said artwork.

31. A teething toy according to claim 26, wherein a plurality of said teething means are provided.

32. A teething toy according to claim 26, wherein said teething means is textured so as to provide teething relief to an infant or small child when chewed on.

33. A teething toy according to claim 26, wherein said teething means is sized and configured so as not to be capable of entering and penetrating to its full depth an opening in a test fixture that is 30 mm in depth, 35 mm in height, and 50 mm in width, with the ends of the width being curved at a radius of 17.5 mm.

34. A teething toy according to claim 26, wherein said teething means is sized and configured so as not to enter and penetrate to its full depth a cylindrical cavity in a test fixture that has a depth of 30 mm, and a circular opening having a diameter of 42.7 mm

35. A teething toy according to claim 26, wherein said teething means is secured to one of said leaves by a tether.

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